

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY CASEY)	
Claimant)	
VS.)	
)	
GREAT CLIPS NO. 1)	Docket Nos. 193,608
GREAT CLIPS NO. 2)	and 196,533
Respondents)	
AND)	
)	
CNA INSURANCE COMPANY)	
STATE FARM FIRE INSURANCE COMPANY)	
AMERICAN FAMILY INSURANCE)	
Insurance Carriers)	

ORDER

Respondent, Great Clips No. 1, and its insurance carrier, CNA Insurance Company, appeal from a Supplemental Preliminary Hearing Order wherein Administrative Law Judge Robert H. Foerschler assessed liability for claimant's bilateral upper extremity problems jointly between insurance carriers for Great Clips No. 1 and Great Clips No. 2.

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment on the dates alleged;
- (2) Whether the Administrative Law Judge exceeded his jurisdiction in finding respondents, Great Clips No. 1 and Great Clips No. 2, to be jointly responsible; and

- (3) Whether Berry v. Boeing applies, thus making respondent Great Clips No. 2 and its second insurance carrier, American Family Insurance, liable for claimant's upper extremity problems.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds the issue of whether claimant suffered accidental injury arising out of and in the course of her employment with the respondents on the dates alleged to be one enumerated in K.S.A. 44-534a as appealable from a preliminary hearing order. As such, this matter is properly before the Appeals Board.

Claimant alleges injury to her bilateral upper extremities while working for Great Clips No. 1 and Great Clips No. 2. At the preliminary hearing of April 13, 1995, claimant's attorney made clear that the only dispute was who was going to pay for surgery to claimant's left hand and wrist. Claimant testified to an immediate onset of symptomatology on July 7, 1993 to her right upper extremity when she picked up a box while working for respondent, Great Clips No. 1. Shortly thereafter, claimant's employment was terminated and she became employed within days with Great Clips No. 2. While employed with Great Clips No. 2, claimant began experiencing symptoms to her left upper extremity and in particular her hand and wrist.

The medical is in conflict in that Dr. Prostic indicates claimant's left upper extremity problems, as well as her right elbow and right shoulder stem from her employment with the respondent Great Clips No. 2. Dr. Quinn, on the other hand, relates all of claimant's problems back to her original injury on July 7, 1993, while employed with Great Clips No. 1. The Appeals Board finds it difficult to comprehend how claimant could suffer injury to her left upper extremity on July 7, 1993 without experiencing symptoms until October 1993, some three (3) months later. As such, the Appeals Board finds the medical evidence of Dr. Prostic to be more persuasive and finds claimant's left upper extremity symptomatology, for purpose of preliminary hearing, to have stemmed from her employment with respondent, Great Clips No. 2. The Appeals Board finds claimant did suffer personal injury by accident arising out of her employment during her employment with respondent Great Clips No. 2 and thus finding, must reverse the Administrative Law Judge's Order of joint responsibility in this matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Supplemental Order of Administrative Law Judge Robert H. Foerschler in this matter shall be and is reversed and respondent, Great Clips No. 2, is held responsible for the costs

associated with the surgery to claimant's left upper extremity as a result of the injury suffered therein.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael Wallace, Overland Park, Kansas
Timothy G. Lutz, Overland Park, Kansas
D'Ambra M. Howard, Overland Park, Kansas
Rex W. Henoch, Kansas City, Kansas
Joseph R. Ebbert, Kansas City, Kansas
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director